
P-91
Estate of
Alapai (K.)
deceased.

Encl'd Prob. Rec;
Vol. " 9 fol. 648
Vol 14. fol. 140.



I loko o ka Aha Kikie o ke Hawaii Pae Aina

I ka mea Hanohano.
G. M. Robertson Luma
Kamawai o ka Aha Kikie

Ke hoakaka aku

nei ka mea mona ka iwa malalo nei
iwa ou me ka Mahalo. Ma ka la 16
o Novemaba ma ka M. H. 1859, i hala
aku nei na make aku o 'Alopaia' o ka
mohe Koolaupeke Oahu, a ma Kamehame
no Kona wahi i make ai, a na waiho
mai oia i kana palapala Kanohi
hope loa no Kona waiwai e waiho ana
ma Kamehame, a eia no na palapala la
Kanohi la iloko o Koulima e malama
nei; no ka mea, ouan no ka hunahe
oke ihoonohoi ma na palapala la.
A ke noi aku nei au iai oe, e Koko oe
i la e hooiaio ai no na palapala ka
noha la, a e kii ia ma ka olelo hoola
la na mea pili i ke Koko i ka mea i
make, ke maraao lakou e kue mai
ma ia la, Ouan no me ka Mahalo,

Hikaka

Ke hooiaio nei au o Kikaka (ou iuna o
ke Aha na polohi a na oiaio la na
mea i hoi ia ma Kona palapala no
i malama.

Hikaka

Worob type me. 19th Oct 1864
L. M. Luma, asst Clerk

Palapala no a Uika
e hoioi i'ka po
lapala hana
a Palapala
Kanaka Kaula
pouma

2.10

A. W. B. Kaula
aka Davis

Series 007: 1st Circuit Court Probate #91

In the Supreme Court of the Hawaiian Islands.

To the Honorable G.M. Robertson, Justice, Supreme Court

The undersigned respectfully shows that on November 16, 1859 past, Alapa'i (m) of Kāne'ohe, Ko'olaupoko, O'ahu died at Kāne'ohe leaving his Last Will and Testament regarding his property situate at Kāne'ohe. And this said Will is presently in my care and possession. I am the executor designated by the said Will. I hereby petition you to appoint a day to prove said Will and make notice to all blood relatives of the deceased to appear on that day should they want to contest.

I remain respectfully,
Kikaha

I, Kikaha, swear before God that everything stated in my aforesaid petition is true and correct.

Kikaha

Sworn to before me 19th Oct. 1864
L. McCully, Asst. Clerk

Translated by: Jason Achiu, Hawai'i State Archives
1/1998

Palapala Hoitolina.

Owau o ka mea noia Kaima malalo
iho nei, ke hoili nei au i kou waiwai
paa, a me kou waiwai lewa ia Kikaha
kua waiho i Mare pono ia ma ke Kana-
wai, peni. — "

1. Waikapoki Ili Aina ma Kanohi, a me
ka loko ia e pili pu ana, a me Pahi, ke
lele no Waikapoki —

2. 1/2 o ka Ili Aina o Hinawao i Niuli Kohala

3. Hookahi Mo.

4. " " Papa Kauhau

5. " " Lio - K. —

A no ka oiaio o keia hoili ana. Ke Kauhau nei
i kua inoa i keia la 2 Augate, M. H. 1858. —

Claprae
Kanohi, Koolanoko, 2 Augate, M. H. 1858

Ike maka

W. C. Pii

Kana

Kulailua

Hawaiian Islands }
Oahu Is. }

Be it rembrd that

on this fifth day of November A. D.
1864 the foregoing written Instru-
ment was duly proved before me
in the Supreme Court of the Hawa-
ian Islands as and for the Last
Will and Testament of Kapaia K.
of Kaneohe deceased -



In testimony whereof I
have hereunto set my hand
and caused to be affixed
the seal of the Supreme Court
this day aforesaid.

G. M. Robertson
Justice of the
Supreme Court.

Series 007: 1st Circuit Court Probate #91

Will

I, the undersigned, do hereby devise my real and personal properties to Kikaha, my legal wife, as follows:

1. Waikapoki, 'Ili land at Kāne'ohe and the adjoining fish pond and Pānī'oi, a **lele**: (detached piece of land) belonging to Waikapoki.
2. 1/2 of the 'Ili land of Hinaweo at Niuli'i, Kohala.
3. 1 bed
4. 1 table
5. 1 stallion

As proof of this devise I hereby sign my name on this 2nd of August A.D. 1858.

Alapa'i

Kāne'ohe, Ko'olaupoko. 2 August A.D. 1858.

Witnesses:

W.E. Pi'i

Ka'awa

Kula'ilua

Hawaiian Islands, O'ahu Ss. Be it rembered that on this fifth day of November A.D. 1864 the foregoing written Instrument was duly proved before me in the Supreme Court of the Hawaiian Islands as and for the Last Will and Testament of Alapa'i (m) of Kāne'ohe deceased.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the Supreme Court this day aforesaid.

G.M. Robertson

Justice of the Supreme Court

Translated by: Jason Achiu, Hawai'i State Archives
1/1998

Supreme Court
In Probate.

Nov - 5th 1864

In re proof of
Will of Alapai K.
of Kaneohe

At Chambers

— before —

Justice Robertson

Advertisement of this application
was made in Kuokoa of 29th
of October - Naha Kuali'i counsel
W. E. O'i sworn says

I live at Kaneohe.
Knew Alapai of Kaneohe - He died
some time, some years, five or four, ago
I know he executed a will - I drew
it, at request of Kikaha, the petitioner.
This is the will. The property was
real estate at Kaneohe and at Ko-
hala. This is Dick's signature. There
were three witnesses - I, Kulailua
and Kaawa. Dick had signed first.
It was written in Dick's house - He
was then sick of his last sickness

It was nearly a year before his death. I read this to him before. He said it was "pomo". We witnessed it at same time. in his house. The other two wits. are present here.

Kulailua K. sworn says.

I am from Kamehameha. Knew Alapai of Kamehameha. He died in year 1859. His will was written in 1859 he died a year after. I saw him execute his will. Pii wrote it. at the house where Alapai was. Alapai signed it with his own hand. It was witnessed by Pii myself & Kaawa. Alapai first signed it. It was first read, by Pii. Did hoapma? This is the will. this is my signature as witness.

Kaawa K. sworn says

I am from Kamehameha. Knew Alapai of Kamehameha. He died in yr 1859. He previously executed a will, a year before his death. I saw the will —

I saw him sign the paper. Kulai-
ma & I & Pii attested as witnesses
This is the will in question.

The widow is present. Says she
has had possession of the land
without opposition.

The Court considered the
will as proven and directed
Certificate of probate to issue
to Kikaha.

Sam Coney
Deputy Clerk

P. 91
Supreme Court
in Probate

In the matter of the
Estate of the Will
of Stephen late
of Lincoln. Decided

Proceedings &c -

vol. 9. folio 648.

Nov 5th 1864

Aha Kiekie o ko Hawaii Pae Aina.

Ma ka Waiwai o

Alapai, K. no
Kaneohe i make.

Imua o ka Mea Hanohano

C. C. Harris

Luna Kanawai o ka Aha Kiekie :

Ka Palapala Hoopii o

J. B. Kolopapela, K.

o

Kaneohe —

i oleloia ua make kauoha ole, ke hoike

haahaa aku nei imua o keia Aha, ua make o

Alapai, K.

ma ka la — o —

M. H. 1858 i kona

wa i make ai, he kanaka no

Kaneohe —

e noho ana ma

Koolanpoko

a he waiwai kona e waiho ana iloko o ka

mana o keia Aha Hookolokolo. Ua huli pono a ua ninaninauia, ina paha ua waiho

mai ka mea i make i oleloia, he palapala kauoha hooilina, aole nae i loa; a ma ka

ike a me ka manaoio o ka mea hoopii, ua make kauoha ole oia.

Ke hoike hou aku nei ka mea hoopii, o ka nui o ka waiwai o ka mea i make,

ua like me na dala

hookahi lausani

a oia hoi keia.

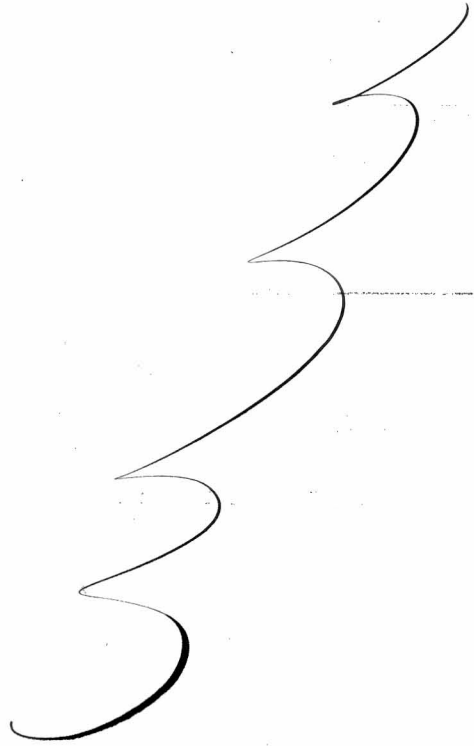
2 afana aima kuleana ma Kaneohe
a me ka lile o Waikapoko ma
Kaneohe, Koolanpoko. Oahu —

o na hooilina wale no o ka mea i make a'u i ike ai : *

J. B. Kolopapela
oia ke keiki pua ka mea i
make e ola ni —

* Maanei e hahaiia na inoa, na makahiki, kahi i noho ai, a me ke ano pili o na hooilina a pau, ina paha ua mare a mare ole paha, ua oo a oo ole paha.

Ma kōu ike a me ka
manaois, ole he aie o
ka mea i make in hā



NOLAILA, ke noi aku nei ka mea hoopii, e kohoia o

J. B. Kolopapela

i Luna Hooponopono no ia waiwai, a e hoolaha

aku i ka lohe i na mea a pau i pili, e hele mai i ka manawa a me kahi a keia Aha
e kauoha ai, e hoike mai ina he mau kumu ko lakou, e ole e ae ia aku ka noi a ka
mea hoopii.

Hanaia, 14. Okaloha — 1878

Kakauinoia a hoohikiia imua o'u
i keia la 14 o Oct.
M. H. 1878.

J. B. Kolopapela
per W. Keli'ie's Konn
Lois —

A. Rosa
Hope Kakaunohu
Aha Kiekie
— " —

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Ala Hiekie

Ma ka Hooponopono Kahu.

Ka Hoopii no ka Palapala Lu-

na Hooponopono Waiwai

ma ka waiwai o

Mahealani o

Mahealani i make.

I waihoia mai i keia la

o Mahealani 1878,

e L. H. Hiekie

A. O. P.

Haka Kakauelelo.

Dec. 10 x

Ala Hiekie

Series 007: 1st Circuit Court Probate #91

Petition for Letters of Administration
Supreme Court of the Hawaiian Islands

In the Matter of the Estate of Alapa'i (m), deceased, from Kāne'ohe]
To the Honorable C.C. Harris, Justice of the Supreme Court:

The Petition of J.Z. Kolopapela (m) of Kāne'ohe, respectfully shows to this Court that Alapa'i (m) died on (blank) day of (blank) month, A.D. 1858 being at the time of his death a resident of Kāne'ohe in Ko'olaupoko and leaving Estate within the jurisdiction of this Court. That due search and inquiry have been made to ascertain if said deceased left any Will and Testament, but none have been found, and according to the best knowledge and belief of your Petitioner, said deceased died intestate.

Your Petitioner further shows, that the Estate of said deceased is of about the value of \$1000. and consists of:
2 pieces of kuleana land at Kāne'ohe and a *lele* belonging to Waikapoki at Kāne'ohe, Ko'olaupoko, O'ahu.

That the only Heirs of said deceased, known to your Petitioner are:*
J.Z. Kolopapela, the surviving son of the deceased.

*Here give names, ages, residence and connection of all the Heirs, whether married or single, minors or adults, etc.

According to my knowledge and belief, the deceased had no debts.

Wherefore your Petitioner prays that J.Z. Kolopapela may be appointed as Administrator for said Estate and that due notice be given to all persons interested, to appear at such time and place as this Court may direct, to show cause, if any they have, why the prayer of this Petition should not be granted.
Dated 14 October 1878.

J.Z. Kolopapela

Subscribed and sworn to before me
this 14th of Oct. A.D. 1878.
A. Rosa, Deputy Clerk, Supreme Court

Translated by: Jason Achiu, Hawai'i State Archives
1/1998

[Olelo Kauoha e Hoolaha aku no ke Noi ana mai e Koho i Lunahooponopono Waiwai.]

Aha Hookolokolo Kiekie o ko Hawaii Pae Aina,

MA KA HOOPONOPONO WAIWAI.

Ma ka Waiwai o Hapai, K. } J MUA O KA
o Kaneohe, Koolaula, Oahu } Lunakanawai Kiekie
i make, kauoha ole. } Charles C. Harris

MA KA HELUHELU a me ka waiho ana mai o ka Palapala Noi a J. Z.
Kolopapela, K. o Kaneohe e hoike
mai ana o Hapai, K. no Kaneohe
ua make kauoha ole ma Kaneohe, Oahu, ma ka la — o
M. H. 1878.

a e Noi ana e haawi ia ka Palapala Hookohu Luna Hooponopono Waiwai ia J. Z.
Kolopapela, K.

UA KA UOHA ia o ka Poa hahi ka la 4 o Novemaba
M. H. 1878, oia ka manawa i koho ia no ka hooloke ana i ua noi la, imua o ua Lunakanawai la, ma ke
Keena Hookolokolo o keia Aha, ma Honolulu, a ma ia manawa a ma ia wahi no e hele mai ai na mea a
pau i pili e hoike mai i ke kumu, ina he kumu oiaio ko lakou, e ae ole ia ai ua Noi la. A o keia olelo
kauoha e hoolaha ia ma ka olelo Hawaii i ekolu pule ma ka
"Nupepa Kuokoa" he nupepa ma Honolulu.

Kakau ia ma Honolulu, ko Hawaii Pae Aina, Okatoba 14. M. H. 1878.

Ikeu:

Chas. C. Harris
Nui
Lunakanawai o ka Aha Kiekie.

A. Rosa
Hope Kaukauolelo.

P. 91 2-
Supreme Court
In Probate

Testate of
Alapai died
Order of Notice
of
Hearing

Filed 14 Oct. 1898

(C. P. P. P.)
Prob. Clerk

Series 007: 1st Circuit Court Probate #91

(Order of Notice of Petition for Administration)

Supreme Court of the Hawaiian Islands,
In Probate.

In the Matter of the Estate of Alapa'i (m)
of Kāne'ohe, Ko'olaupoko, O'ahu, deceased,
intestate.]

Before Justice
Charles C. Harris

On Reading and Filing the Petition of J.Z. Kolopapela of Kāne'ohe alleging that Alapa'i (m), of Kāne'ohe, died intestate in Kāne'ohe, O'ahu on the (blank) day of (blank) month A.D. 1858 and praying that Letters of Administration issue to J.Z. Kolopapela.

It is Ordered that Monday the 4th day of November A.D. 1878 be and hereby is appointed for hearing said Petition before the said Justice, in the Court Room of this Court, at Honolulu, at which time and place all persons concerned may appear and show cause, if any they have, why said Petition should not be granted, and that this order be published in the Hawaiian language for three weeks in the Nūpepa Kū'oko'a, a newspaper in Honolulu.

Dated at Honolulu, the Hawaiian Islands., October 14, A.D. 1878.

Charles C. Harris
Chief Justice of the Supreme Court

Attest:
A. Rosa
Deputy Clerk

Translated by: Jason Achiu, Hawai'i State Archives
1/1998

Supreme Court.

IN PROBATE.

HONOLULU, OAHU,

Hawaiian Islands. } SS.

In the Matter of the Estate of

Alapai' ^k/_u

Deceased.

AFFIDAVIT OF PUBLICATION.

AHA Hookolokolo Kiekie o ko Hawaii Pae Aina, ma ka hooponopono waiwai. Ma ka waiwai o Alapai k o Kaneohe, Koolaupoko, Oahu, i make kauoha ole. Imua o ka Lunakanawai Kiekie Charles C. Harris. Olelo kauoha e hoolaha aku no ke noi ana mai e koho i lunahooponopono waiwai. Ma ka heluhelu a me ka waiho ana mai o ka palapala noi a J. Z. Kolopapela k o Kaneohe e hoike mai ana o Alapai k no Kaneohe, ua make kauoha ole ma Kaneohe, Oahu, ma ka la — o —, 1858, a e noi ana e haawi ia ka palapala hookohu lunahooponopono waiwai ia J. Z. Kolopapela. Ua kauohaia o ka Poakahi ka la 4 o Novemaba, 1878, pia ka manawa i koho ia no ka hoolohe ana i ua noi la, imua o ka Lunakanawai la, ma ke keena hookolokolo o keia Aha ma Honolulu, a ma ia manawa a ma ia wahi no e hele mai ai na mea a pau i pili e hoike mai i ke kumu ina he kumu oiaio ko lakou, e ae ole ia ai ua noi la. A o keia olelo kauoha e hoolaha ia ma ka olelo Hawaii i ekolu pule ma ka Nupepa Kuokoa he nupepa ma Honolulu.
Kakau ia ma Honolulu, ko Hawaii Pae Aina, Okatoba, 1878
Ikea: CHAS. C. HARRIS,
Lunakanawai Nui o ka Aha Kiekie. 881 St.
A. Rosa, Hope Kakauolelo.

Antone Rosa of Honolulu, aforesaid, being duly sworn, says that he is the ^{Deputy Clerk} ~~Attorney~~ of the Supreme Court, and, as such, has charge of the ^{a file} ~~printing~~ of the "Nupepa Kuokoa", a newspaper designated by authority for the publication of Legal Notices in the Hawaiian language, and has ^{examined the legal} ~~charge of all~~ advertisements in said newspaper.

That the Notice of Hearing of which the annexed is a printed copy, was published in said newspaper at least three weeks, as said paper was regularly issued, to wit: Every Saturday from the Twenty-first day of October A. D. 1878 to and until the Second day of November A. D. 1878, both days inclusive.

Subscribed and Sworn to before me,
this 4th day
of Nov A. D. 1878

A. Rosa

J. E. Barnard
Clerk of the Supreme Court.

Supreme Court
IN PROBATE.

In the Matter of the Estate of

Alapai's

Deceased.

Affidavit of Publication of

Notice of Hearing

Filed *4th* *Nov.* *day*

of November, A. D. 1878

by

A. Rosa
Deputy Clerk.

Supreme Court
In Probate.

Honolulu, O'ahu]
Hawaiian Islands] ss.

In the Matter of the Estate of Alapa'i, deceased.

Affidavit of Publication

Supreme Court of the Hawaiian Islands, in Probate. In the matter of the estate of Alapa'i (m) of Kāne'ohe, Ko'olaupoko, O'ahu, deceased intestate. Before Justice Charles C. Harris. Order of Notice of Petition for Administration.

On reading and filing the Petition of J.Z. Kolopapela (m) of Kāne'ohe, alleging that Alapa'i (m) of Kāne'ohe died intestate at Kāne'ohe, O'ahu, on the (blank) day of (blank) month 1858 and praying that Letters of Administration issue to J.Z. Kolopapela.

It is ordered that Monday, the 4th of November, 1878, be and hereby is appointed for hearing said Petition before the said Justice, in the Court Room of this Court at Honolulu, at which time and place all persons concerned may appear and show cause, if any they have, why said Petition should not be granted. And that this Order be published in the Hawaiian language for three weeks in the Nūpepa Kū'oko'a, a newspaper in Honolulu.

Dated at Honolulu, Hawaiian Islands, Oct. 1878.

Chas. C. Harris

Chief Justice of the Supreme Court

Attest:

A. Rosa, Deputy Clerk,

88l 3t

Antone Rosa of Honolulu aforesaid, being duly sworn, says that he is the Deputy Clerk of the Government Press and as such, has charge of printing the "Nūpepa Kū'oko'a," a newspaper designated by authority for the publication of Legal Notices in the Hawaiian language, and has examined the legal advertisements in said newspaper.

That the Notice of Hearing of which the annexed is a printed copy, was published in said newspaper at least three weeks, as said paper was regularly issued, to wit: Every Saturday from the twentyfirst of October A.D. 1878, to and until the second day of November A.D. 1878, both days inclusive.

A. Rosa

Subscribed and sworn to
before me, this 4th day of
Nov. A.D. 1878.

Jno. E. Barnard

Clerk of the Supreme Court

Supreme Court

In Probate

In the matter of
the Estate of
Alapai of
Koolaupoko
deceased.

November 4th 1878.

Before
Harris C. J.
At Chambers.

Petition of J. J. Kolopapela (K) son of
decedent for Letters of Administration on the
above Estate to be issued to him

Order of Hearing made 14 October last return-
able this day

Present: S. Keliipio for Petitioner and Kolopapela.

Mr. Barenaba appears for Mr. C. Brown who
is Counsel for Apa son-in-law of Kikaha
widow of Alapai and mother of this Petitioner
who died last September at the Seper Establish-
ment at Molokai. He alleges that the

land belongs to Kikaha, that she got this land from her husband by will. — She married Haole (K) who is still alive — They had a child Maria who married Apa and bore two children who are still alive and she is dead.

Kikaha left no will. — Kikaha had two other children, Kaloka (K) Hanaiiii (W) who is at Hakipuu — Kaloka is living with Petitioner

Haole was the father of these three — and Alapai was the father of the Petitioner —

Keliipio disputes the Will of Alapai that he never heard of any Will.

Barenaba — I don't know the date of the Will but saw it in a lease of Kikaha's that the Will was probated 5th November 1864. —

Both Counsel ask that the case may stand over for a fortnight — which is granted. —

A. Rosa
Deputy Clerk

18th November 1878

Continued from 4th inst.

Before Chief Justice Harris.

At Chambers.

Present: L. Kelūpio for Petitioner

C. Brown for Contestant

(See side-note page 4.)

Mr. Brown states that by the Records of this Court, it appears that a Will purporting to be the last Will & Testament of Alapai dec'd, was admitted to Probate on the 5th Nov. 1864 and it also appears by the Petition in said case that Alapai died in Nov. 16th 1859, which was not disputed and claims that all parties are bound by this record; that the Will is within the time prescribed by the code and moves that the Petition for Letters

of administration be dismissed and
quotes "Re Kalanahala III Hawn 64.
Hanino 762 Hawn Repts II.

Mr. Keliipio states that he can bring
in testimony that Alapai died before
the 16th Nov. 1859 and asks for a continuance
until the 1st Monday in January which
is granted by the Court.

A. Rosa

Deputy Clerk

6 January 1879.

Before Chief Justice Harris.

At Chambers.

Continued from 18th November 1878.

Present: C. Brown for the Will.

L. Keliipio per contra.

Mr. Keliipio calls

18th November 1878.
The motion before the Court this morning is to revoke the probate
of the Will of Alapai, deceased.
Chas C. Harris C.O.

5-
W. E. Pii sworn

I live at Kaneohe - knew a
man Alapai by name - remember making
some document of Alapai's, think it
was in 1858 - wrote it at Alapai's re-
quest & I think the wife joined in the
request - it was a will - Alapai was
sick I remember but don't remember the
disease - when the paper was finished
I read it to him -

Mr. Brown objects to the admissibility of this
evidence & cites *Kaliipulapela v. Pimano*
I Hawin Rep. 280.

Evidence ordered to be proceeded with -

After I had finished the reading of
the Will he gave his approval & signed.
(Witness looks at the Will) Alapai

signed his own name to it and 3 other witnesses beside, myself, Kalauna & Kulailua & I could not guess the exact day after execution of will that he died but several months; but I can say that he either died last months of 1858 or first months of 1859 - My ^{belief} ~~impression~~ is, that he died long before October 1859 & it is very clear to me that he didn't die after that. I think that I was one of the witnesses at the proceedings for probate of the will before Judge Robertson. I gave testimony before him but can't remember all that I said but I think it was something like what I've said to-day. remember the women of will was between 1864 & 1865 -

X^d by Mr Brown - Witness looks at

7

Will - He died in either Nov^r & Dec^r 58
or Jan^y 59 - I believe the boy Kolopape-
la who is here in Ct was over three years
old, abt four years ~~old~~ old - Kāiawa is
dead - the other witness is ~~dead~~ in the
Court room - Kikaha " the widow & mother
of the boy ^{Kolopape} was present at the proceedings
before Justice Robertson -

By the Court:

Alapai had only one child
with ^{Kikaha} ~~Alapai~~ - He died & the widow Ki-
kaha married again & had two sons &
two daughters - I don't remember whether
I went to his funeral or not - He was buried
at Kaneohe but don't remember what part
of Kaneohe - may be ⁱⁿ the Church Yard -
It was a member of Mr B. W. Parker's

8.

Church - I am a deacon of that Church now.
After Manuel ~~death~~ left we searched
the records of the Church & found on the
death book the name of Alapai but
without any date - I can produce the
Book, one of my associates has it -

A. Kulaihua ^{de} sworn

I live at Kaneohe, Dist.

of Koolaupoko. (The witness is very blind -)
I cannot see at all but know when it is
day light - knew Alapai - he is dead -
saw him die - died in — , don't remem-
ber - I was present when he executed a will —
~~and~~ until it was finished - Ohi wrote the will,
at the request of Alapai & Kahaka at the
house of Kala - I saw Alapai sign - was
not blind then - I have only been blind a

little over a year - Alapai write his name
 first two afters - That of us signed as
 witnesses. (names them) Alf, Kaawa & Pii.
 Alapai died at another house quite far
 from this house that we were in - Kakaewai,
 who used to live there & was a little crazy
 is dead - He died several months after the
 exⁿ of the will at my house, having left the
 other house. I went to Kaelepuke to make a
 found & on my return he was still alive -
 He was a relative of mine - He staid there
 with his wife & mine - When the Tax Col-
 lector came around he was alive then -
 the Tax collector's name I can't remember -
 This makes me think that he lived a year
 after exⁿ of will - He is now dead - Kapalaau
 directed me to build the pound & was paid

by him - Kekuanaoa was Governor of the Island then & the Minister was John Young.

I may be mistaken abt John Young - I am quite certain Mr. Juad was Minister of Finance.

I was p^d at Kaelepule - never came to the Interior Office - don't know who was Clerk Interior Department - Kawana was still alive & was the Magistrate of Kaneohe - can't say which of them died first - Kawana's wife was Mele Haamui - don't remember who succeeded Kawana - maybe Honokaupu. Alapai was my cousin - My then wife was Malieikualoha -

Mr. Pii recalled by the Court.

Honokaupu succeeded Kawana at Kaneohe - Nakeu succeeded Honokaupu - Daniel Kaialanu succeeded Nakeu -

Okulauha proceeds.

I cannot fix the date
of the death of Alapai -

S. H. Pooka^a sworn

I live at Kameohe -

Okulauha. knew a man Alapai by name.

remember he died either in last part of 58

or in first months of 59 - the reason I know

this is because ^{I was a scholar} ~~a school master~~ under Maa

laciki at Kameohe near Pehipio house now

near the church, he died then - I heard

of his death but didn't go ^{to} the house
to see his dead body - Okopapula was

then near 4 years old - I am sure that

he was born in 1854 & was four yrs old

then but can't fix the day - we used to go to

bathing at a place near Alapai's place

this boy was being nursed by his mother
~~at~~ Oikaha from the Breast. Went
 to school in 1852 ^{after month of August} for the first time -
 x'd by Mr. Brown

Didn't ~~see~~ take notice
 of every death at Kaneohe - don't remember
 every person that died in Kaneohe. The
 reason I remember is because Alapai was
 a man of some importance - was a Huku-
 manu -

Continued indefinitely

A. Rosa
 Deputy Clerk

20th February 1879

In re Alapai^k } Before
decd } Harris C. J.

Continues from 6th January last.

Present: Mr Brown - Mr Castle.

Mr Kelūpio.

The Records of the Church of Kaneohe made by Mr B. W. Parker, ^{are} ~~is~~ produced, being placed in the hands of the Clerk by Mr Pi who is a deacon of that Church, from which appears the name of Johnathan Alapai. died. no date. but four lines above ~~died~~ appears an annotation thus: ^{"(Died)"} Make April 1864. Sol^r Kaelemakule. "

Messrs. Castle & Brown suggest that the

records are merely names of members of the Church and that notes of death or dismissal were made with date on the margin.

Mr Castle, who appears for Haole 2^d husband of Alapai's widow says that he has made ^{examination} the best ~~exam~~ he could at Kaneohe and has satisfied himself that Alapai ~~~~~ deceased more than five years previous to the probating of the Will.

Mr Brown who appears for the minor children of Maria daughter of decedent and children and her husband Ahfat, states that it is a matter for the Court to determine upon testimony. - Maria is dead and was the child of Haole the

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second husband. It appears by the Church records on a subsequent page from that referred to before that among the list of dead Church members the name of Alapai died 1858, and in the list of 1859 appears four deaths and no Alapai appears. In the list of 1860 there are eight deaths and no Alapai. The name of Alapai in the necrology of 1858 stands third.

N. B. It is conceded on all sides and is proven by evidence to the Court that Alapai died in 1858.

Mr. Castle relies on the point that the will ought to have been presented within five years after death - that Civil Code was passed 1st May 1859

Mr. Brown claims as before, former proceedings folios three and four and submits case to consideration of the Court; that Petitioner has no standing in Court, he being in this Court on a

Petition for Letters of Administration and not
for a Petition to set aside Probate of Will.
The Court takes the case into consideration

A. Roca
Deputy Clerk

1879. July 27th.

The Court this day files its decision, revoking
the probate of the Will

Mr Brown gives notice of appeal to Supreme
Court in Banco.

P. 91
Supreme Court

In Probate

In the matter of
the Estate of
Alphonse, dec'd.

Proceedings

4-

718
H.M. 79-6 Jan 20 1899

Points to be elucidated in the matter of Alapai's Estate.

1. Mr. Parker a record of the death of his Church members for himself
2. When did Kawanā die? The Interior's office should show that or the Governor's Office should show when Honokaupu was appointed or the Finance Office to show the last receipt of Kawanā or the first receipt of Honokaupu or the Probate office show the administrator of Kawanā's Estate, his heirs were Mele Haamui his wife and Kawanā his son
3. See when Mele Haamui died by Probate Records. See when she was remarried by Mr. Parker's records after Kawanā's death if there is no records of the marriage who was license agent about that time and see by his record when the license was granted.

4. See when Mr. Alapai was remarried by the same means as Mele Haamui.

Mr. Henry Parker went to Lahainaluna as Teacher in 1860 and Alapai had died a considerable time before that time. See therefore what date Mr. Parker went to Lahainaluna.

Alapai died of Paralysis and was sick

a long time.

5. See what time ^{was} appointed Pound Master at Kaelepulu. The Governor's office should show that. The Interior office should show the date of the expense of building the pound. Look to the newspapers to see the date of Proclamation of the opening of the Pound at Kaelepulu. though they omitted that for some time until directed to do it again by the Courts.
6. See when Honokaupu ceased to be magistrate, it ought to through the Governor's office, or through the Finance office.

Page
Supreme Court

In Probate

In re Alphonse

deceased

Compte to be charged

1.

Supreme Court In Probate

In the matter of the
Estate of Alapai (K)
deceased.

A paper purporting to be the Will of Alapai (K) was presented before Mr. Justice Robertson, and by him admitted to Probate on the 5th of November 1864. The Will aforesaid is dated the 2^d of August 1858, and the petition offering the Will for probate, sets forth that Alapai, the Testator, deceased on the 16th of November 1859.

In the evidence, as it is recorded touching the Will, it is stated by Kulailua and Kaawa, two of the witnesses to the Will, that Alapai died in the year 1859. - Kulailua likewise testified that the Will was made in 1859, and the death occurred a year afterwards; But the Will itself, as it has been said above, was dated on the 2^d of August 1858. - Kaawa likewise testified that the Will was made a

2.

year before Alapai deceased.

The paper devises all the real and personal property to his wife Kikaha. W. E. Pii one of the witnesses to the Will, in his testimony before Justice Robertson, says that she wrote the will at the request of the Testator's wife.

On the 4th November last, J. Y. Kolopapila, the son of Alapai, — applied for Letters of Administration on the Estate of his father. This young man was 3 or 4 years of age at the time of his father's decease, and was his only son.

The widow of Alapai (Kikaha) — subsequently married a man named Hoole who survives her; she died last September, and she had by ~~him~~ her second husband 3 children, Haloka (K), Heanaiui (W) who now lives at Hakepuni and Maria now dead, who married Apa, a Chinaman and left 2 children.

At the hearing for Letters of Administration Counsel for Apa, acting for his children, objected to the Letters of Administration, and made protest of the Will before mentioned, which —

Stolopapila claimed to be a surprise on him, saying, that he never heard of it before. - At a subsequent day, McKelupio Counsel for Stolopapila offered to prove that the averment of the first petition, to wit; that Alapai deceased on the 16th November 1859, was untrue; and that in point of fact, he died during the year 1858, or more than 5 years previous to the offering of the will for probate, and asked leave to prove it, on a motion to revoke the probate of the will.

Two of the witnesses to the will survive, and both of them testify that the man died within a short time - a few months as they say, after the making of the will; and they asserted that he died either in 1858, or in the early months of 1859, and a considerable time previous to October, 1859.

At the hearing on the 20th January 1859, the record of the Kanioko Church, of which Alapai was a member at the time of his decease, was produced, and in the list of deceased members for the year 1858, Alapai's name is third on the list. So that it is certain and admitted on all sides, that there was a misrepresentation, at the hearing regarding the time of the decease of

H.

Alapai; that he died more than 5 years previous to the offering of the Will for Probate; and that the infant boy had no one present at the hearing to protect his rights.

At the hearing on the 20 February 1879, Mr. Castle appeared for Hoole and set up a claim for him based on a deed from Hikaha his wife to himself which Mr. Castle said ~~that~~ he didn't claim had efficacy as a deed, but that he would, in case the probate of the Will of Alapai was not revoked, offer as a will of Hikaha and therefore claimed that he had a locus standi in Court to support the will of Alapai.

Mr. Castle said that whilst he was obliged to concede that it did not admit of a doubt that Alapai had died more than 5 years previous to the offering of this Will for probate, yet in as much as the Civil Code was not published until the 17th May 1859, and Alapai had deceased previous to that time, by force of the decision in the matter of the Will of Nanaino (2 Hawaiian Rep. 762,) the probate ought to stand.

To support this proposition, it has to be

conceded, that Olapai died previous to 17th May 1859, and not between 17th May and 19th October 1859, and I feel assured that he did die before the 17th May 1859, though from Mr. Tui's testimony it may be somewhat doubtful. The question therefore arises whether I shall consider the ruling in Naininos' case to be of binding authority. I now propose to examine it somewhat, and to give some reasons why I should overrule it.

The Court in that case say "that no statute is held to be retrospective as in violation of any constitutional provision when it affects rights, unless such shall be its necessary construction." The Statute to which this saying is applied reads as follows:

"No written will shall be allowed to be proved after the expiration of five years from the death of the Testator" with an exception in favor of a Minor Civil Code S. 1474. Now to make the principle which the Court lays down as the foundation of its decision, applicable, it will be necessary to hold first that this Statute is "retrospective" which it is not necessary to do if the construction is

placed upon it, that the five years within which an existing will shall be admitted to probate commences to run on the 1st of May 1859.

Secondly; it will be necessary to hold in order to make this dictum applicable, that there was a right vested in any person to keep a will as long as he pleased without offering it for probate which can hardly be taken as true.

But says the Court, continuing the argument "If the Statute applies to the past it would be very unequal in its operation as the time of limitations is computed from the date of application for probate, retrospectively to the death of the testator. In some cases it might be a day and in others five years, or any time intermediate. Now; the answer is that in its terms the Statute is unlimited in its application, and the reasoning is entirely overcome by making the date at which the prohibition shall commence to run against a will existing at the time it begins at the date when the Legislature made known their will upon the subject, and certainly whilst we must apply the rule that the Legislature could not intend

an injustice and therefore could not intend to cut off a person from proving a will which had been made more than five years before; there would be no injustice in saying that whoever should neglect to prove a will already in his possession five years thereafter, should be subjected to the letter of the law, and it should be borne in mind, in this case, that this young man Kolopapela has had no opportunity to be heard before; for he was an infant when his father died; and his mother, whom he did not wish to disturb, and who, under any circumstances, would be entitled to the use of one third of the Estate as her dower, died a few weeks previous to this application.

The Court in the case of Nanaino, say, that the provisions of the Statute have reference to wills made subsequent to the passage, and that in its terms, it had no reference to the past.

The enactment merely sets forth that "no written will shall be allowed to be proved after the expiration of five years from the death of the Testator" and in its terms does not say whether the will should be made before or after the passage of the act and

8.

Therefore it is to have a reasonable application. In order to ascertain what is a reasonable application or in other words, what was the reasonable intention of the makers of the Statute, it may be well to enquire into the cause or necessity of making the Act, - to enquire into the mischief against which the law had not previously provided.

L'Escurier on Statutes p 565.

The object of the Court should be in the "construction of the Statute, to give effect to the intention of the Legislature, and the object of an enactment," in order that we may know in "what sense; with what latitude or under what restrictions, the words used are to be received and understood."

Ib idem 572.

"And after a full investigation what constitutes the competent or inefficient expression of the Will of the Legislature, it must be conceded that effect cannot be given to an intention not expressed"

ib idem 573.

First, therefore, what was the evil which the Legislature designed to ~~remedy~~ remedy? Evidently, the bringing in of false bills

at a remote time, when it was possible or likely, that evidence cannot be produced to controvert the signing, or to show the state of mental health of the Testator; and the degree of influence used upon him in order to induce him to make the will. This is especially an evil in this Country, where loose ideas, regarding the making of wills, prevailed at the time; and perhaps it may be said, prevail, though to a lesser degree, now. The Legislature used apt words for the purpose of putting a stop to this evil. Every one is warned that if they have a will in their possession, they must present it within five years from that date. To say that any one will be cut off, by the liberal construction of the enactment from proving a will which had been made 5 years before on the next day after the publication of the Statute would be merely to say, because an unreasonable construction might be given to the Statute, therefore a reasonable construction should not be given. It is certainly no hardship to a man to say that he must prove a will in his possession within five years. And it seems to me to be a fallacy to hold that a person who had a will, made previous to this act

has a vested right in that Will and a vested right and a vested right to keep it suppressed so long as he pleased, that is to say until it may suit his pleasure to bring it forward; to say, in fact, that a person who had a will, the maker of which had died on the 16th of May stands in a different attitude than he would if his Testator had died on the 1st of May.

Take this very case. The will is made by a man sick for a long time of a paralysis (although the style of sickness is not testified to, yet it is personally known to the Court; he makes his will in favor of a young and vigorous wife to the exclusion of their Son. Probate of will was had several years afterwards, whilst the son is still in very tender years: Nobody was appointed to watch his interest. He is not even mentioned in the will, and there is not a scintilla of evidence to show that his father's attention was ever directed to the boy; whilst the will itself is of the briefest possible character "I leave all my property both real and personal to my wife Sukah" then follows the enumeration of the property and his signature, so that the essential part of the will

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consists of one single line.

Now can there be a better instance of how a weak and ignorant person may be induced to leave his property without any limitations whatsoever, and then by the lapse of time, the non-presence of persons interested, all traces of influence lost. - In this particular instance it is personally known to the Court that this man died of paralysis as it has been said above, and was paralysed a long time. Yet one of the subscribing witnesses to the Will, testifying now, says, that he has forgotten the nature of the disease of which the man died.

But if the reasoning held in the case of Nandino is entirely sound, the Will, if it had not been proved in 1864, might just as well be proved now in 1879, and any number of wills made prior to 17th May 1859, might be proved to any quantity of property subject only to the suspicion of a falsity by reason of the lapse of time. Indeed I am at a loss to understand why a "Kauoha" or unwritten will, which was usual and customary before the enactment of the Civil Code, might not be proven by simply alleging that it was made previous

12.
to that date, for the 1465 Section of the Civil Code is alike susceptible to the construction placed upon the 1474th Section by the decision in question.

I am of the opinion, therefore, that the Probate of the Will of Alapai made before Justice Robertson on the 14th day of November 1864, should be revoked and I do revoke the Probate of the said Will and declare the same not to be proven according to the laws of this Kingdom.—

Chas C Harris C.J

Honolulu,
February 27th 1879 }

P. 91
Supreme Court
in Probate

In the matter of
the Estate of

Alapai's deceased

Opinion of Harris C. J.
reaching Probate of Will

27th February 1899